
MIOSHA

Construction Safety and Health Division (CSHD)
Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

DIVISION INSTRUCTION

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CSHD-COM-16-1R1

DATE:

October 27, 2020

SUBJECT: Inspection and Citation Policy for Accident Prevention Programs and First Aid Training

- I. Purpose. To establish policy when alleging a violation of Construction Safety Standards Part 1. General Rules, /R408.40114(1) and /R408.40132(3) et seq.
- II. Scope. This instruction applies to all MIOSHA CSHD field and supervisory staff.
- III. References.
 - A. Agency Instruction MIOSHA-STD-08-3, [Medical Services and First Aid for General Industry and Construction](#), as amended.
 - B. Construction Safety Standards [Part 1](#). General Rules /R408.40101, et seq., as amended.
 - C. [OSHA Standard Interpretation: Material Safety Data Sheets\(sic\)](#); Dated January 30, 1997, corrected April 16, 2009.
 - D. [OSHA Standard Interpretation: Clarification of systems for electronic access to MSDSs\(sic\)](#); Dated February 18, 1999.
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; and MIOSHA Messenger, and Internet Accessible.
- V. Cancellations. All previous versions of this division instruction.
- VI. History. History of previous versions include:

CSHD-COM-16-1, November 1, 2016
CSHD-MEMO-COM-10-1R1, September 23, 2013
CSHD-MEMO-COM-10-2R1, September 9, 2013
CSHD-MEMO-COM-10-2, August 27, 2010
CSHD-MEMO-COM-10-1, August 27, 2010
- VII. Contact. [Eric Allen](#), Manager, Construction Safety and Health Division
- VIII. Originator. [Lawrence Hidalgo, Jr.](#), Director, Construction Safety and Health Division
- IX. Background. Construction is a mobile industry with constantly changing environments. Many jobsites have multiple employers within the same shared or adjacent space(s). Safety Officers(SO) and Industrial Hygienists(IH) may inspect the same employer several times throughout the year at different jobsites. It is important for employers to develop an Accident Prevention Program(APP) to comply with the requirements established in Part 1. General Rules.

Construction is an industry where on any given day workers may work at a different location, project, or work alone. There are several scenarios surrounding the requirements of Rule 114(1) and Rule 132(3) that could be used as a basis to allege a violation. CSHD

strives to be consistent in applying the requirements for an APP and First Aid Training Requirements.

X. Significant Changes.

- A. Updated background (Reference IX).
- B. Added further explanation to the availability of an APP (Reference XI. B).
- C. Explanation provided for the circumstance of citing 114(1) and 114(2) within the same inspection (Reference XI. E).
- D. Removed language regarding disciplinary or incentive programs in an APP.
- E. Amended language to the scenario where an employer can be cited for not following their own APP (Reference XI. G).
- F. Added further explanation when a subcontractor is following the controlling contractors (CC) APP (Reference XI. H).
- G. Provided an explanation of the language used in Rule 132(5) (Reference XII. A and B).
- H. Added further explanation of the requirements of the first aid person (Reference XII. C).
- I. Clarified the requirements of the first aid person(s) on multi-employer work sites (Reference XII. C – F).
- J. Added the situation when an SO/IH is to cite and not to cite for lack of a first aid certificate at the worksite (Reference XII. G).

XI. Procedures for Alleging an APP Violation of Rule 114(1) or 114(2).

- A. A violation of 114(1) can be alleged for any or all of the scenarios listed below that are required for an APP. The scenario must be documented in the case file and described on the respective alleged violation against the employer.
 - 1. The employer has not developed an APP (i.e., program was not established and/or in writing).
 - 2. The employer has not maintained their APP (i.e., program was not updated).
 - 3. The employer has not coordinated their APP with their employees (i.e., instruction or training was not provided to employees).
 - 4. The employer cannot produce a copy of their APP while at the worksite. (i.e., it is not physically or electronically available at the jobsite)
- B. When the SO/IH requests to review the employer's APP and the employer is not able to produce it, this is a violation of Rule 114(1). It is MIOSHA CSHD's stance that the APP is to be available at the worksite, as indicated in the plain text of the rule.

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- C. The SO/IH will allege a violation for 114(1) even if an employer is able to provide a copy of their APP before the SO/IH conducts the closing conference. In this scenario, the violation would be marked as abated if all the elements are met. The SO/IH shall not return to the job site for the sole purpose of reviewing an employer's APP. It is a violation for the employer not having their APP available on-site, even if the SO/IH has reviewed the APP at a previous time/inspection.
 - D. Employers are allowed to use electronic devices for the retention of their APP, or other documents. (i.e., Hazard Communication Program) (Reference; OSHA Standard Interpretations: [January 30, 1997](#), corrected April 16, 2009, and [February 18, 1999](#).)
 - E. The SO/IH will not allege a violation of Rule 114(2) if alleging a violation of Rule 114(1), unless the following two situations are both present:
 - 1. The APP was provided after the employer was found to not have it at the jobsite or available, and,
 - 2. The reviewed APP was discovered to have missing elements.
 - F. A violation of Rule 114(2) will be alleged when an employer has an APP but is not implementing their APP and/or when there is a deficiency of an employer's APP. The specific letter {e.g., 114(2) (a - e)} and the deficiency will be documented in the case file and described on the alleged violation.
 - G. A violation will not typically be alleged against an employer for not following specific elements within their own APP that are more stringent or exceed the requirement of Rules 114(1) and 114(2).
 - H. Each employer must have their own APP. On some jobsites, the controlling contractor(CC) will require a subcontractor to abide by their (controlling contractor's) APP. In this scenario, the employer is still required to have an APP for their own company and does not alleviate any employer's requirements under rule 114(1) and/or 114(2).
- XII. Procedures for Alleging a Violation of Rule 132(3) and/or 132(4), Medical Services and First Aid.
- A. The rule does not indicate each individual employer on a worksite is required to have a person who has a valid certificate in first aid training.
 - B. First aid services can be designated to a specific person on-site. If someone is designated to provide first aid services for the site, the SO/IH must ascertain if that person(s) has a valid certificate in first aid training, is willing to render first aid to all workers at the worksite, and is always present when the worksite is active. Back-up person(s) must meet the same criteria as above and can be utilized to ensure presence of first aid services whenever workers are present. If the appropriately trained person(s) designated to render first aid is not always present when the worksite is active, this is a violation.

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- C. When a CC is present on site, CSHD staff will first ascertain, from the representative of the CC, whether a person(s) present at the worksite has a valid certificate in first aid training. If the person(s) meet all obligations in XII.C., then all employers onsite are in compliance.
- D. If the CC does not have a valid certificate in first aid, but can identify the first aid person(s) at the worksite, staff will verify this with the person(s) indicated during the walk around. If the SO/IH is able verify compliance with obligations in XII. C., then the employers involved in the inspection are in compliance.
- E. When only subcontractors are present, then it is appropriate to ask each subcontractor involved in the inspection for a valid certificate in first aid training. If one of the workers meets all obligations in XII. C., then the employers on-site are in compliance. When there are no employees with a first aid card, the SO/IH will allege a violation to each employer involved in the inspection.
- F. If the first aid person is not able to produce their first aid certificate while at the site, a citation is to be issued. If the first aid person is able to provide a valid first aid certificate by the end of the on-site inspection, a citation is not to be issued. The SO/IH shall not return to the job site for the sole purpose of reviewing/obtaining an employer's first aid certificate.
- G. When an employer has only one employee on the site, a written plan as prescribed in Rule 132 (4) may be substituted for a first aid trained person.